



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 6 OF 2014

MOSES WAYMBA OKOTH & 2 OTHERS.....PLAINTIFFS

VERSUS

SENIOR SCHEME MANAGER WESTERN KENYA

SCHEME SUB-COUNTY & ANOTHER.....RESPONDENTS

AND

AMMANUEL NUDI JAMA & OTHERS.....INTERESTED PARTIES

R U L I N G

1). The plaintiff filed suit and contemporaneously an application for injunction which at exparte stage the court granted injunctive reliefs in their favour against the defendant from holding elections of Ahero Irrigation Scheme Multipurpose Cooperative Society. Upon being served the defendants as well as the interested parties herein filed their replying affidavits and raised a preliminary objection on a point of law that this court at this level is not seized of jurisdiction to determine this suit.

2). In support of the objection they have relied on the provisions of section 76 (1) of the Cooperative Societies Act 1997 which states:

“76 (1) if any dispute concerning the business of a cooperative society arises:-

- a. **Among members, past members and persons claiming through members, past members and deceased members.**
- b. **Between members, past members or deceased members and the society, its committee or any officer of the society it shall be referred to the Tribunal”**

3). The defendants argued that the issue between the parties as it can be deduced from the plaint has to do with elections involving the officials of the society. They contend that the defendants have called for election of the society yet their tenure has not expired.

4). In response the plaintiffs have submitted that the defendants herein are not members of the society and they are not therefore governed by the societies Act. They agree that the 1st defendant is a Member of the National Irrigation Board and he has no business in interfering with the issues involving the cooperative society.

5). I have perused the pleadings herein as well as the parties submission. This preliminary objection on jurisdiction ought to be determined as a matter of priority. As was held in the now famous case of

Owners of the Motor Vessel “Lillian S” –VS- Caltex Oil (Kenya) Ltd:

“Jurisdiction is everything. Without it a court has no power to make one more step. A court of law downs tools in respect of the matters before it the moment it holds the opinion that it is without jurisdiction”.

6). The plaintiff’s plaint at paragraphs 8, 9, 10 and 11 clearly shows the issue at hand, namely a dispute regarding elections. The same takes cognisance of the fact that the defendants have called elections before time which was contrary to the laws.

A careful reading of the same does not argue that the defendants do not have the capacity to do so. The other issue which has been avoided by the plaintiff is the description of the defendants. Their description at paragraphs 5 and 6 of the plaint are not clear and are amorphous to say the least.

7). Having found that the question at hand is to do with the election of the society does this fall within the perview of section 76 of the Cooperatives Act? Firstly, the certificate of incorporation attached to the replying affidavit of Emmanuel Ndeda Juma sworn on 2-4-2014 shows that the society was registered under the Cooperative Societies Act on 27-6-1973 vide Registration No. C/21444.

This has not been disputed by the plaintiffs.

8). Secondly, the societies by law attached to the plaintiffs affidavits states under Article 65 that:

“Any disputes arising out of any of the by-laws or concerning the business of the society, which cannot be settled at the general meeting shall be referred to the Cooperative Tribunal”. (underlining mine)

I hold therefore that the parties herein are subject to the Cooperative Societies Act. The defendants are players within the society and perhaps on the ground ensuring that the irrigation projects are taken care of.

9). However, the plaintiffs plaint is premised on election which is an issue subject to its by-laws and the Cooperative Societies Act.

This suit is a nonstarter in so far as it ought to be referred to the cooperative tribunal to decide whether the intended election should be held or not. Further even if the defendants are intermeddlers the tribunal can easily make a finding over the same. Once the tribunal makes its decision then any dissatisfied party shall be at liberty to appeal to the High Court.

The upshot of this court’s finding is that this suit is improperly before this court. The issue at hand has to do with an election dispute which ought to be handled by the Cooperative Tribunal as it involves members of a society and its officials and its by-laws grants it comprehensive procedures on how to resolve them.

The preliminary objection is therefore upheld. the suit is hereby dismissed with costs and the interim orders of injunction earlier granted are discharged.

Dated, signed and delivered at Kisumu this 23rd day of July, 2014.

**H.K.
JUDGE**

CHEMITEI